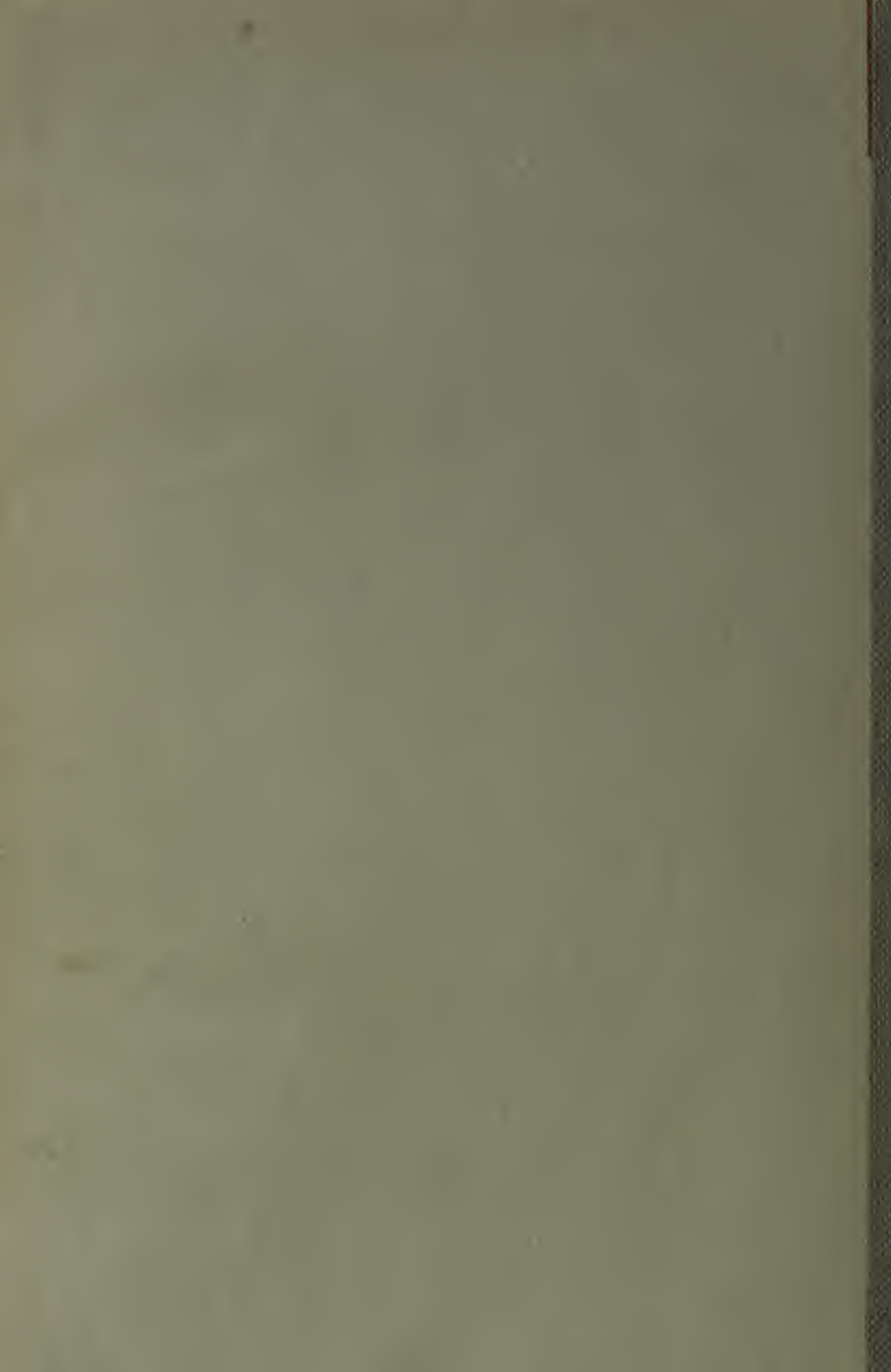


EcF
W5743fr

Whipple, John
Free trade in money.



FREE TRADE IN MONEY,

Ecf
W5743fr

OR

NOTE-SHAVING,

THE GREAT CAUSE OF

FRAUD, POVERTY AND RUIN:

STRINGENT USURY LAWS,

THE

BEST DEFENCE OF THE PEOPLE AGAINST

“HARD TIMES.”

AN ANSWER TO JEREMY BENTHAM.

BY THE

HON. JOHN WHIPPLE,

OF RHODE ISLAND.

554331
5-12-52

Money is a labor-saving invention, authorized and regulated by government for the convenience of the people; and he who thrives by buying and selling it adds nothing to the wealth of the state, but interferes with the industry of others.

BOSTON:
DAYTON & WENTWORTH,

86 WASHINGTON STREET.

1855.

STRINGENT USURY LAWS

THE BEST DEFENCE AGAINST

“HARD TIMES.”

THE following article on the Usury Laws was written by the Hon. John Whipple, of Rhode Island, in 1836. It was first printed in New York, and subsequently in the “American Jurist,” and separately, and in the “Bankers’ Magazine,” in 1850.

Of the great ability of Mr. Whipple to master any subject which he undertakes nothing need be said. His reputation as a powerful thinker, an able and experienced lawyer and eloquent speaker, is fully established and acknowledged. He is a gentleman of wealth; and it is certainly a subject of congratulation that he is disposed to exert his splendid talents in behalf of the people, — the laborer, the mechanic and the farmer.

It may not be improper to remark that this article was highly complimented as conclusive upon the subject by the late Judge Story, and by some of the most distinguished statesmen of Great Britain.

As a certain portion of the citizens of this Commonwealth, and of other states, are constantly endeavoring to induce legislators to try the experiment of repealing the usury laws, it has been thought that the republication of Mr. Whipple’s article at the present time might accomplish much good.

If the proposed experiment were to be tried at the expense of the rich, for whose benefit it would inevitably tend, we might view the matter with sufficient indifference to withhold all objections. But it is far otherwise. The rich, or the possessors of money, propose to try an experiment, which can cost them nothing, whatever may be the result; and the poor, or those whose income depends upon industry and prudence, will be made to suffer the accumulated penalties which are sure to come as the legitimate fruits of error.

Besides, the people require no such experiment. The experiment has been frequently and sufficiently tried throughout the civilized world. The ultimate convictions of the people and the ultimate measures of government have been remarkably uniform; and hence we find usury laws in every civilized nation* upon the face of the earth, and we find them in every State of the American Union.†

* Holland may be excepted; but Holland has its peculiar history. (See page 5.)

† There are no usury laws in California, and enormous rates of interest prevail. General and permanent prosperity cannot be realized there without such laws.

Those citizens who petition for the repeal of the usury laws may be divided into four classes, namely :

1st. Those who wish to increase their income by being permitted to tax the borrower what they please ; 2d. Those who act as agents, or brokers, and desire to increase money negotiations for a commission ; 3d. Those who are borrowers, and are made to play a subservient part to the lenders ; and, 4th. Those who are made to believe—and this class is a very small one—that such an experiment would really tend to benefit the people, although they are at a loss to tell how or in what way such a result has ever been reached by such means.*

We insert the following letter from the Hon. W. W. Wick, late member of Congress from Indiana, and formerly a judge in that state. It is brief and to the point, and may be viewed as a complete answer to all petitioners for experiments.

“Washington, D. C., March 7, 1849.

“SIR : Your note of inquiry is before me. I propose leaving for home this evening, and my response must be brief.

“In Indiana, the usury laws were repealed twelve or fourteen years ago, — perhaps more,—and were not reinstated for three or four years. The frightful results of the repeal were not immediately developed. Many a ‘stricken deer’ retired to die in secret, too proud to make known his ruin, induced by his own imprudence and the absence of legal protection against it. Many were sold out of house and home, ere public attention was directed to the subject ; but no sooner had the effects of the repeal been developed and become the subject of public discussion and conversation, than an *irresistible public opinion called for usury laws*. The first step was to fix the rate of legal interest at six per cent., and to sanction contracts for ten per cent. In two or three years the taking of more than six per cent. was prohibited.

“If I had time, I would be glad to make a sketch of the desolations left in the track of the usurer, during his brief reign in ‘Hoosier land.’ I was judge of one of our circuits at the time, and was a *shuddering witness* to these desolations.

“I have rendered judgment upon contracts for the payment of fifty or twenty cents per day, or per week, for a loan of fifty or a hundred dollars, and in some instances the interest had become more than ten times the

* We wrote a letter of inquiry to a highly respectable citizen of New York city (Jan. 23, 1850), respecting the petitioners for the repeal in that place. We received a reply (dated Feb. 4, 1851), from which we make the following extract :—

“Your first question is, ‘What class of citizens are petitioning for the repeal of the usury laws?’ The originators of the petitions (so far as I am able to judge) are capitalists,—such as brokers, wealthy merchants, &c.—who are lending money at higher than the legal rates of interest. Another class who advocate this repeal are what are called street-brokers, who negotiate loans for others at exorbitant rates of interest, charging the borrower $\frac{1}{4}$ per cent. for their services. There are, however, many others who know little of the nature of finance, who are induced to sign these petitions because they are told that if the restrictions were taken off, the competition among lenders of money would reduce the rates of interest. If this class of citizens depended on their own judgment, a little reflection would tell them that there is now no obstacle to competition in interest at or below seven per cent.; and that the design of these petitions is to INCREASE instead of to diminish the rates of interest.”

amount of the principal. It is worthy of remark that the usurer rarely brought suit for his money until the accumulating interest had swelled the debt to an amount approximating closely the value of the debtor's estate, or until notified to do so by the surety, or endorser of the debtor. The usurer, in the mean time, counted and gloated over his daily or weekly accumulation of interest, and the debtor (poor fellow !) lived upon the hope of extrication through some miraculous intervention. I am convinced that in some instances they had a secret faith that the creditor could not find it in his heart to demand the entire sum legally due, or relied upon private assurances from the creditor to a like effect.

" Had the legislature not interfered and tied the hands of the spoiler, an immense amount of property would have changed hands in a few years. As it was, clerks in stores, venders of spirits by retail, &c., in many instances, became wealthy, almost without capital of their own ; and by the use, at a limited interest, of the money of some friend, who knew them well, and could watch over their operations ; and, to make them wealthy, a great number of small farmers, owning in fee land worth five to fifteen hundred dollars, were ruined. In many instances the ruin had not half done its work when the estate of the borrower was engulfed. Discouraged, shamed and indignant, he either fled to dissipation, or became a *man-hater*. I know many men of excellent natural qualities, and much inclined to be moral and gay, and who became hopelessly demoralized and misanthropical. The moral desolations created by the absence of usury laws will tell upon any community to an extent almost infinitely beyond the mere ruin of estate.

" To show that it is not best, to repeal usury laws as an *experiment*, it is only necessary to say that the contracts made in one year of the absence of such laws would not naturally develop their consequences during that year to any considerable extent. As years pass away, the evil results will develop themselves in a geometrical ratio. Long before they develop their full force and effects, the community will demand usury laws, and the blighting curses of many a withered or aching heart will follow the advocates of their repeal to their graves.

" In haste, yours truly, W. W. WICK."

As the State of Wisconsin ventured to repeal the usury laws in 1849, we had a desire to know whether the people of that Commonwealth were beginning to reap the bitter fruits of such an experiment, and addressed, the following year, a letter of inquiry to the Hon. I. P. Walker, United States Senator from Wisconsin. We received an answer, dated Washington, Jan. 24, 1850, and from which we make the following extract. He says, in speaking of the repeal :

" The argument in favor of this policy was, that competition in the loan of money, the rate of interest being unrestricted, would produce a great influx of capital to the state. It certainly has produced an influx of *money*, but not of *capital*.

" The result is (and is to be), that money has been freely taken at an interest from twenty to fifty per cent. The money loaned was that of non-

residents. Now, taking the average of interest to be twenty-five per cent., it is obvious that, at the end of four years, the amount loaned in the state will again be sent out; and that, too, with an equal amount for the interest.

"This is a poor way, in my opinion, to increase the real capital of a state. You will now appreciate the distinction I make above between money and capital in this relation.

"I have no doubt that the results to our state will be *most disastrous*."

The predictions of Senator Walker, and of others who had confidence in stringent usury laws, were fully verified. Interest ranged from two to ten per cent. per month, and loans were executed for long periods of time, on speculation, as high as forty per cent. per annum. Although the experiment lasted but few months, it is the deliberate opinion of some of the most intelligent and respectable citizens of Wisconsin that the enterprise of the state received a check from which it cannot recover for twenty years.

After the experiment had been tried, and usury laws reënacted, we addressed a letter of inquiry to R. W. Wright, Esq., of Waukesha, Wis., in regard to the practical results. The following is an extract from his interesting reply, dated Dec. 16th, 1851 :

"The results of the law (of repeal) were so disastrous to the best interests of the state, and so contrary to the expectations of its friends, in increasing instead of diminishing the rates of interest, that the experiment was very readily abandoned. Its bitter fruits were left behind. The high rates of interest paid by borrowers had destroyed the confidence of lenders, and the consequence was that money became scarcer than ever. Instead of begetting a spirit of industry and frugality, the borrowing of large sums of money at these high rates of interest increased the prodigality and expenditures of those who were already involved in debt, and brought ruin upon others who sought to traffic in money as an article of commerce. Men got a passion for borrowing, and as the demand for money increased, and with the demand the hazard or danger of losing it, the rate of interest advanced, the rate being always in a ratio compounded of the inconvenience and hazard. As the result of all this, we find nearly one third of the entire improved real estate in Wisconsin under mortgage, a greater part of which will have to be sold, sooner or later, at the end of a decree. Men are now paying the most exorbitant rates of interest to rescue their farms from destruction, when, had it not been for the law of 1849, and the spirit of recklessness and extravagance which it inspired, not a dollar's encumbrance would ever have been put upon them. Hundreds of persons are now laboring in the mines of California to keep down the interest on the land and mortgages hanging over their property in this state. Such, in my judgment, has been the result of this great experiment to divert money from its legitimate purposes,—the purposes of exchange in Wisconsin."

Allusions have been made to the experiment of England with respect to commercial paper of twelve months and less. The objects of this experiment were to *increase* the *demand* and the *rates* for money, to encourage business transactions, where capital was very plenty and very cheap,—the

very opposite of those professed by the repealers of the United States. So far as the results can be traced to their sources, the experiment has enriched the lender, and impoverished the borrower. It has induced forced and ruinous transactions; and we may venture to predict with safety that the experiment will prove in the end disastrous to the people. This remark may also be applied to the more recent vote of Parliament to repeal the usury laws of England. [Aug. 10, 1854.]

This experiment was tried in England, in the sixteenth century, and for nineteen years the interest on money had no legal limit. In the reign of Elizabeth usury laws were restored. Lord Burleigh remarked that "the repeal of the statute against usury had not been attended with the hoped-for effect; but the high price for money on usury had more and more abounded, to the undoing of many persons, and to the hurt of the realm." A nation that can exist without usury laws has ceased to exist as a nation of progress.

A law authorizing the discount of short paper at unlimited rates would influence money-lenders *in all cases* to require short paper, to be made under promises of renewal, and the obligations of our citizens would be given subject to conditions wholly within their control. Such an exception would prove a most dangerous trap to the borrower, and in many respects would doubtless prove more fatal than a total repeal of all the usury laws of every name and nature.

In all these plans of repeal the banks are to be excluded.* This indeed would be excellent. It would be equivalent to a guaranty from government against loss to speculators in money. It would be taken at government cost, and sold at a merchandise price. There could be no risk in buying, and no risk in holding the currency, and the rich would be the only competitors for purchase in the market. By such a process, the great objects of a currency would be subverted. Monopoly and prostration of business would follow as consequences.

The banks pay a heavy tax to the commonwealth for the privilege of giving to the people a currency. They are subjected to expenses and risks peculiar to their business. They are required to have a specie basis, and to conform to rigid requisitions of law. This is deemed necessary for the protection of the currency, and for the protection of the commercial interests of the people. Why exclude them? The securities specified are those which the banks usually prefer to receive; and why should they be denied

* It is proposed that holders of mortgages shall not be permitted to make their bargains as to interest. This was done in England; but the money-lenders immediately required two notes for the same loan. If the loan was £5000, at 5 years, one note was written for £1000, at 12 months (the period fixed for paper that the law allowed to be sold at any rate of interest), and one note for £4000, at 5 years, at 5 per cent. per annum. The *bonus* was taken out of the note for £1000 for the whole loan. Permit by law usury in any form, and that form will be seized upon by the money-lenders, even if they have to make new notes every thirty days. It is estimated that three fourths of all loans upon mortgage, in Massachusetts, are *over due*; and the holders of these securities would demand a higher interest and new papers. Savings-banks and other institutions would move in the same direction; and the new wants of Massachusetts alone for money would be beyond the capacity of all New England to supply. The sufferings of the few who pay high rates now might not be increased, but the *many* would be placed in new relations of distress.

the obvious rights which a system of competition if it secures to any should secure to all? Is it that money would be made too plenty and too cheap, or that the head sources would be cut off? Perhaps, if the banks were permitted to prefer to lend money for what interest they please, they might ask the highest price for it, and thus give no chance to speculators. The officers and directors of country banks might esteem it a duty to carry their money to the great cities *for sale*. It would be a good sort of merchandise to buy and sell. It might be sent by mail to all parts of the country, at little expense and at no risk, even without insurance. The banks, of course, would speculate, and largely participate in the general ruin. They would manufacture the *dice*, and then join the people in throwing them. Legalized gambling would supersede industry, and a currency would be impossible.

The assumptions that money is merchandise, and that money is made scarce on account of the usury laws, are not only false positions, but they are preposterous absurdities. To these assumptions may be traced many of the singular errors of Bentham, McCulloch, Wayland, and others, who have written upon this subject.

Money exists only by legislation; *merchandise* is the product of individual labor or of private enterprise. *Money* is the legal standard by which value is measured; *merchandise* is that which is valued by the aid of this standard. *Money*, as such, has no intrinsic value; *merchandise* is sought for only on account of its intrinsic value. *Money* is perpetual in its nature, and is designed for all time; *merchandise* is temporary, and adapted to special wants, and made for wear or consumption. *Money* is concentrative — centring in the keeping of the few; *merchandise* is diffusive, being required and consumed by the many. *Money* is a legal certificate of value, and is transferable for what it represents; *merchandise* is the thing valued for what it is, or its uses. If *money* were *merchandise as money*, then a yard-stick would be merchandise as a *measure*, and the cloth would measure the yard-stick as much as the yard-stick the cloth. If *money* be *merchandise*, and a law be passed to make it so, then all *merchandise* should be made by law *money*, which would be a literal destruction of the invention of *money*.* *Money* pays a debt at the will of the debtor; but law recognizes

* A great variety of commodities have been legally adopted to serve as *money* in different countries and states of society, such as cattle, corn, tobacco, beaver-skins, leather, pasteboard, iron, copper, silver, gold, &c. &c. &c. Whatever commodity be selected to serve as money, is invested with a special power; and it is the greatest power conferred by government.

In a letter from the Hon. John Whipple, dated Nov. 6, 1854, he thus states and answers the free-trade argument in regard to *money*, — “That because a man possesses the legal right to demand what he pleases for his land, his merchandise and all other property, that therefore he ought to be authorized to ask and receive what he pleases for his money; that because the free-trade principle prevails beneficially in relation to all other subjects of property, therefore it would operate beneficially in relation to money.”

“The proposition is to confer upon money all the privileges as to terms that belong to merchandise. A owns horses, and houses, and money. By law he can let his horses and his houses for the highest terms he can obtain. Why should he not have the same power to get as much as he can for his money?”

“The substance of the answer which I should give to this merely popular and plausible argument is this: If this argument, which proceeds from the creditor side of the house, could be so modified as to place money on a level, *in all respects*, with merchandise, or other property, no rational man would object to the change. The free-traders

no such power in *merchandise*. *Money* has a minimum and maximum power according to law, otherwise it could not be a standard of value with any more consistency than government can authorize unlimited yard-sticks or unlimited bushels; but *prices* of merchandise fluctuate, and, in relation to the legal standard, according to demand and supply. *Money* is the instrument of exchange — of settlement among traders; *merchandise* is the stock *in trade* to be exchanged. *Money* is authorized by law for *convenience*, not profit; *merchandise* is produced by the labor of the people, and for profit. *Money* as *merchandise* ceases to be money; *merchandise* as *money* nowhere exists except by legislation. *Money* exists only as a relative agent for measuring the value of *other things*; *merchandise* is prized for what it is in itself. *Money* is an agent to *promote* want; *merchandise* *supplies* want. *Money* saves labor; *merchandise* sustains it. *Money* makes the price; *merchandise* pays it. *Money* is borrowed and loaned; *merchandise* is bought and sold.

Whatever may be said to the contrary, these fundamental distinctions are universally acknowledged; for, while people are content to *borrow money* on special terms of security, all are earnest to sell *merchandise* on credit, and without such security. Purchasers of *merchandise* are politely and urgently solicited to buy; while borrowers of *money* are ceremoniously permitted to make their propositions.

As all products designed for use, ornament, or consumption, are to be weighed, measured, tested, or valued, the governments of all nations prescribe by law the means; and hence we have weights, measures, tests and money, so ordered that all may understand their uses, and render them available at the least possible expense. Such instruments, designed by gov-

do not propose *equality* of function and power. They do not mean to *equalize* the *powers* of money and merchandise. The *creditor* says, 'I ought to have the privilege of using my money as merchandise, and to obtain the most I can for its use.' Very well. But if money is to have *all* the privileges of merchandise, then merchandise should have all the privileges of money. If they are put on a level as to the use of the *creditor*, they should be put on a level as to the use of the *debtor*.

"But will the creditor consent that land, or a bale of goods, shall be made a tender in payment of his debt? Why not? If one is as much an article of trade as the other, they should be treated alike in all respects." It was not the design of the law so to treat them. The same law which gives to the creditor the power of refusing everything but gold and silver in payment of his debt, ought to fix the value of that gold and silver. But by this new theory the creditor is not only entitled to refuse everything but gold and silver, but to be the judge of its value, or, in other words, to demand what he pleases by way of interest. To be consistent, the law that confers greater privileges upon money than upon merchandise should also impose upon it greater restraints. If the free-traders, therefore, propose to destroy this preëminence of money so far as its use by the creditor, they should destroy it so far as regards its use by the debtor. But what they do propose is to extend the privileges of the creditor in fixing the value of his money, but not to extend the privileges of the debtor in the use of his merchandise. If money is to be treated as merchandise by the creditor, merchandise should be treated as money by the debtor.

"But to treat money as merchandise, to give to the creditor the power of asking what he pleases for its use, is a desecration of its original and sole design. It was created by government as a test of value, as a medium of exchange. It stands as a bound-tree in the forest. Neither adjoining owner has a right to use it for any other purpose. It derives all its value from government, and government alone ought to fix its value."

ernment for the convenience of the people, require the protecting power of the most stringent laws.

Before 1837, the State of New York trusted to the fallacious policy, so often demanded by money-lenders, and found out by sad experience that it was fatal to the industry of the people. At that time, the Assembly applied a remedy, which continues to be the law of the state, and is the most severe of any in the United States against usury. The usurer is made liable to lose his whole debt, to be fined a thousand dollars, and to be imprisoned six months.

It is with much satisfaction that we find, in the recent message of Gov. Clark, of New York (Jan. 2, 1855), a clear and comprehensive view of this subject. He says :

"It is already intimated that the efforts heretofore made to modify our usury laws will be renewed with the present legislature. The idea of free trade in money pervades the commercial community. Money, it is urged, relieved from the restraints of usury laws, would become plentiful and cheap. It is worthy of remark, however, that the argument proceeds generally from the lender rather than the borrower of money. And does not this argument prove either too little or too much? If money is to be made free, should there not be equal freedom on the part of those who exchange their labor and the products of labor for money? If an arbitrary value is given by law to coin and bank paper, why not also fix by law the standard value for labor, so that capital and labor may exist upon an equality? If you invest money by legislation with a power which, unrestricted, enables capital to oppress labor, do you not, while enfranchising capital, enslave labor? If, then, money is to be relieved from legislative restraint, should it not also be divested of the power conferred by legislation? While our laws stamp extrinsic values upon coin, may not laws, with equal justice and propriety, declare what rate of interest may be demanded and received for its use? And while legislation permits associations and individuals to circulate their paper promises to pay as money, is it not clearly a duty to limit the rate of usance upon loans? Before declaring gold and silver and their paper representative free, it would, in my judgment, be incumbent upon government to assimilate money to the products of labor by depriving gold, silver and bank notes, of their artificial value. Then, and then only, may money be safely left, like the products of labor, to be regulated by the laws of trade.

"The experience of other countries and older nations, where capital is more abundant, and seeks investment at moderate rates of usance, is referred to for evidence that free trade in money is beneficial to the community. This argument may become applicable to our condition when capital bears the same relation to enterprise and industry in this country that it does in Europe. But while the laboring and producing classes predominate so largely, it becomes us, instead of relaxing usury laws, to provide for their more rigid execution. Indeed, the most valid objection to these laws is found in their lax administration. While respected by law-abiding citizens and by cautious and timid usurers, they are disregarded by those who either hope to evade them, or who rely upon the honor or necessity of bor-

rowers. A law either more or less stringent against usury, if its enforcement could be ensured, would be productive of salutary effects.

"The argument relied upon by the advocates of repeal is, that it will make money cheaper. But, wherever this experiment has been tried in our country, the opposite effect has been produced. Even in our commercial metropolis, where are found those who are most strenuous on this subject, that description of paper supposed to be exempted from the taint of usury can be negotiated only at rates of interest varying from twelve to twenty-four per cent. per annum. Borrowing at this onerous rate leads to almost certain ruin. It may be answered that only in time of pressure are the rates of interest so high. But what, if the power to regulate the whole question resides with capitalists, is to bring down the rates? What is to make money more plentiful and cheap, when those who possess it have the power to keep it scarce and dear? There is a given amount of capital among us seeking investment. If our laws rigidly prohibit the taking of more than the legal rate of interest, that capital would be available for all legitimate business purposes. If loans are made reluctantly at legal rates, it is because usurious ones may be obtained through the violation or evasion of the laws."

If it be the object of the petitioners for repeal to make money plenty and cheap, as they unreservedly assert, then the usury laws should be entirely abolished. Banks, corporations and holders of mortgages, should be permitted to do as they please. If the principle assumed be true of a part, it is true of the whole. If a portion of our citizens be authorized to charge what interest they please on a certain class of securities for the purpose of making money more abundant, there is no reason why all holders of similar securities should not enjoy the same privilege. If the operation of a portion serves to increase our means, the operations of the whole would necessarily lead to still greater abundance. We find strange elements in the proposition of the petitioners. They unquestionably admit the importance of having a good currency, and seriously desire that it should be rendered by the acts of government safe, permanent and uniform. They ask that the banks shall be compelled to take a limited interest under forfeiture of charter. And, beyond this, they propose for themselves a freedom not to be recognized or regulated by law! They ask the legislature to determine by law the rate which they are to pay, and then they propose, by some *legerdmain* process which they do not explain, to produce plenty by having the power of demanding an advance upon that rate according to their own good judgment! They require no *lex scripta* for themselves. This is only necessary for *others*.

If the legislator be called upon to decide whether he shall avert a pang from the suffering poor, or add to the surplus means of the rich, we trust that he will not long deliberate how to decide the question. The power of money, chained as it is by the usury laws, is strong enough. It is too strong for man's best good. If the poor must occasionally submit to the lacerations of the "icy fangs" of unfeeling Shylocks, let it be as seldom as possible, and let some fair Portia be at hand to weigh the flesh, if any be found daring enough to cut it.

We make no application of these remarks as due to petitioners for repeal. We are willing to believe that many of them are influenced by honorable but mistaken motives. We think them all in error. We think them selfish, though, perhaps, not intending to be so. They ask for a law which would benefit the few and oppress the many. They may deny this as an assumption of the question at issue, but their denial will be of no avail. We know what human nature is, — and we know that they are not above it. That they have not examined the subject in its various bearings is sufficiently obvious from the fact that all their views are centred in State-street, and in Wall-street. They count a few merchants in the metropolis as the population of the whole country. They forget the farmer's wants. Although they speak of the mechanic, it is but to impart to him their own errors, and when allusion is made to the interests of the working-classes, it is more a figure of speech than any substantial guaranty of good. We do not speculate. We speak from knowledge, and if it were necessary we could give numerous facts linked with names to illustrate our views. The heartless operations so frequently known to be made in State-street and in Wall-street are no fictions of the brain:

“Where, with sad haste, through several ways they run,
Some to undo, and some to be undone.”

In seasons of speculation faith becomes a passion. Most men become blinded and self-deceived. All feel that they are rich, or indulge in expectations that soon they will be. Extravagant wants induce extravagant wants, and general poverty is the usual result. What is one man's gain is another's loss, and when purchasers are ruined, sellers become poor. The rapacious money-lender deems all rates of interest too low, and the dreaming borrower fancies that he can afford to pay them, however high. Thus, mutual deception is practised until all fall together, saving the few who grow in riches, as vegetation thrives upon its own decay.

It is a remark of an intelligent English writer, that, “In times of speculation we hear much of the fortunate makers of fortunes; we hear little of the numbers who suffer loss, except when some immense failure precipitates hundreds into distress and ruin, or when some pistol-shot reveals the mental distraction of a gambler, not less one because he plays with cotton or shares instead of dice.”

We repeat it, money has too much power already, even under rigid restrictions, without permitting its holders to exercise an unlimited power of control. If connected with labor and objects of industry, it may prove a blessing; but, as an article of mere traffic, it becomes a curse to society.

All laws are violated more or less. So are usury laws. Most money is loaned within the legal rates, and if our penalties for violation are not sufficiently severe to protect the poor man, let their severity be increased. Above all, let the laws be executed. The *buyer* of lottery tickets is fined as well as the vender, and let the same law be applied to money-buyers as to money-lenders at illegal rates.

Allusions have been made to the laws of Rhode Island, Vermont and Connecticut. In these and other states the penalties for violation are light, and

hence it has been urged that their adoption would be an improvement upon those of New York, Pennsylvania, &c. This recommendation discovers clearly the motives of the repealers. The petitioners will not hesitate to violate *the law*, provided the penalty be one which they can afford to pay! What excellent citizens! Most people, we trust, obey laws from convictions of duty. This may be said, certainly, of the small states to which we have alluded, and to the country people of all the states. Those who are willing to violate the laws of their own state, or of other states, for gain, employ Wall-street or State-street agents. They dislike to have their acts known at home.

The usury laws have been opposed especially because "*they are seldom executed.*" It is said that "*they are useless.*" And yet we have recently seen enumerated among the "*evils* of the usury laws," so termed, expressions of indignation because some of the violators of the laws have been compelled to pay the penalties of forfeiture.

Nothing can be more shameful, in our opinion, and more indicative of a degraded moral condition, than a deliberate condemnation of the proper and strict execution of the laws. It is the duty of every citizen to aid in upholding the laws of his country, and, however great the penalty prescribed for violation, to allow no culprit to escape, whether he be a private individual or the agent of a corporation. If this course were steadily pursued, we should soon see an end to the ruinous and gambling practice of paying and receiving illegal rates for money. If a poor man wants bread for his family, he is required to earn or to beg it, — not to steal it. If a merchant wants money, let him make his propositions for it according to law. If he has good security he will obtain it. If his securities are doubtful, it is the worst species of gambling for any one to lead him into engagements inconsistent with his ability, and which will deprive him, in the end, of all means to pay his just debts.

If the people of the United States have a desire to secure for themselves and posterity a permanent prosperity, based upon even justice, industry and skilful enterprise, let them combine to establish a uniform rate of interest throughout the Union, not more than six per cent.; and let them so protect their currency by stringent usury laws, that speculators can have no motive to use it, except in connection with objects of industry, and traders can find no advantage in seeking long credit, for purposes foreign to a legitimate business. We insert for reference, a brief sketch of the

USURY LAWS OF THE UNITED STATES.

MAINE, legal rate of interest, six per cent.; excess only recoverable by law.

NEW HAMPSHIRE, six per cent.; and, if more be taken, the party forfeits three times the excess.

VERMONT, six per cent.; and any excess recoverable by law.

MASSACHUSETTS, six per cent.; penalty for excess, three-fold the whole interest taken.

RHODE ISLAND, six per cent.; any excess illegal.

CONNECTICUT, six per cent.; penalty for usury, loss of the interest.

NEW YORK, seven per cent.; usurious contracts void. Usury a misdemeanor, punishable by a fine not exceeding one thousand dollars, and imprisonment not exceeding six months.

NEW JERSEY, six per cent.; penalty for usury, forfeiture of debt and interest.

PENNSYLVANIA, six per cent.; contract void for excess. If more than six per cent. be demanded and *paid*, the party upon receiving it shall forfeit the money and other things lent, one half to the state, and the other half to the party who shall sue for the same.

DELAWARE, six per cent.; penalty for usury, forfeiture of the money lent, one half to the plaintiff, and one half to the state.

MARYLAND, six per cent.; penalty for usury, forfeiture of excess.

DISTRICT OF COLUMBIA, six per cent.; all notes, bonds, contracts, &c., for more than six per cent., void; penalty, forfeiture of treble amount received.

VIRGINIA, six per cent.; usurious contracts void.

NORTH CAROLINA, six per cent.; usurious contracts void, and penalty for usury, forfeiture of double the money or value of things lent.

GEORGIA, seven per cent.; penalty for usury, forfeiture of the whole interest.

ALABAMA, eight per cent.; penalty for usury, loss of interest.

FLORIDA, six per cent., or eight per cent. by contract; penalty for usury, loss of interest. Person convicted of usury cannot be a bank director.

MISSISSIPPI, ten per cent. by contract; a contract for more is void for the excess.

LOUISIANA, five per cent., by contract eight; penalty for usury, loss of interest.

TEXAS, eight per cent., by contract twelve; penalty for usury, loss of interest.

ARKANSAS, six per cent., by contract ten per cent.; penalty for usury, contract void.

TENNESSEE, six per cent.; penalties for usury, excess recoverable by law, fine and imprisonment.

KENTUCKY, six per cent.

OHIO, six per cent., by contract ten per cent.; penalty for usury, loss of excess above six. Banks taking usurious interest forfeit the debt.

MICHIGAN, seven per cent., by contract ten; excess illegal.

INDIANA, six per cent., and penalty for usury, ten per cent. damage thereon. Usurious contracts with non-residents *void*.

ILLINOIS, six per cent., or, by contract, ten.

MISSOURI, six per cent.; penalty for usury, loss of interest.

IOWA, six per cent., by contract ten; penalty for usury, forfeiture of interest.

WISCONSIN, seven per cent., by contract twelve; three times the excess recoverable by law.

CALIFORNIA, no usury laws, and the most ruinous rates prevail.

THE USURY LAWS.

BY HON. JOHN WHIPPLE, PROVIDENCE, R. I.

THE object of the remarks which I mean to make upon this subject is, not to discuss the subject of the currency, nor to say one half that may be said upon the subject of the usury laws ; but merely to make an attempt to remove the prejudices which prevail (to a limited extent) among some men in trade, on account of the gross misrepresentations which have been made by Mr. Bentham and others of his school. I am satisfied that most men have not given themselves the trouble of investigating the true policy and design of those laws, nor the principles upon which they are founded.

IN 1787, Mr. Jeremy Bentham presented the world with a book which he termed "A Defence of Usury, showing the Impolicy of the Present Legal Restraints of the Terms of Pecuniary Bargains." I presume that Mr. Bentham considered himself entitled to the sole credit of the views then taken of the subject, for he begins by declaring that he does not recollect ever seeing anything yet offered in behalf of the liberty of making one's own terms in money bargains.

He then proceeds to state the general proposition which he means to establish, which, he says, rather jeeringly, was the result of an odd notion of his. It is in these terms :

"That no man of ripe years and of sound mind, acting freely, and with his eyes open, ought to be hindered, with a view to his advantage, from making such a bargain, in the way of obtaining money, as he thinks fit ; nor (what is a necessary consequence) anybody hindered from supplying him upon any terms he thinks proper to accede to.

"That contracts in general ought to be observed," he says, "is a rule the propriety of which no man was ever yet found wrong-headed enough to deny. If this case is one of the exceptions (for some, doubtless, there are) which the welfare and safety of society require should be taken out of the general rule, in this case, as in all those others, it lies upon him who alleges the necessity of the exception to produce a reason for it."

This would have been a fair statement of the question had the exception contended for been a new one. But after admitting, as he explicitly does, that the exception is as old as the general rule, that it had gone into the legislation of almost all nations, ancient and modern, that it had

"taken hold of the imagination and passions of men," and "that custom was the sole basis which either the moralist in his rules and principles, or the legislator in his injunctions, can have to build upon," one would have supposed that he who sought to overthrow an exception practised upon through all time, by both moralists and legislators, would have had the diffidence to believe that the chance that all the world was right was tolerably good, until *he* established the contrary. But Mr. Bentham was a theorist in the largest sense of the term, and ought not to be severely censured for believing all the world wrong in this particular instance, inasmuch as he believed they were wrong in almost all others.

Mr. Bentham thus divides the subject. "In favor of the restraint opposed to the species of liberty I contend for, I can imagine but five arguments :

- "1. Prevention of usury.
- "2. Prevention of prodigality.
- "3. Protection of indigence against extortion.
- "4. Repression of the temerity of projectors.
- "5. Protection of simplicity against imposition."

He then devotes several chapters of his book to the refutation of these five reasons, which are all that he can "*imagine*" in favor of the restraints proposed upon the loan of money.

The substance of the second chapter consists in a successful attempt to show that there can be no such thing as usury in the absence of all previous legal restraint; — that usury is the excess over the rates established by law. This proposition might have been taken for granted.

In the third letter, Mr. B. proceeds to demolish the second reason which he "*imagines*" to be one of the reasons in favor of usury laws, the prevention of prodigality. He says, what in general is true, "that no man, prodigal or not prodigal, will ever think of borrowing money to spend, so long as he has ready money of his own, or effects which he can turn into ready money without loss." That if he is a prodigal "the usury law will not prevent him from spending what he has." And that after he has spent his all, "and has no security to offer, it will be as difficult to obtain money at an extraordinary rate as at an ordinary rate," and thus, therefore, the usury laws can be no protection to him.

In his fourth letter he undertakes to show that the *indigent* derives no beneficial protection from these laws, because, supposing him of sound understanding, he is a better judge than the legislature what he can afford to pay.

The protection of simplicity forms the subject of the fifth letter, and is the only remaining reason upon which Mr. B. imagines the usury law to rest.

He says, "Here, in the first place, I think I am by this time entitled to observe that no simplicity short of absolute idiotism can cause the individual to make a more groundless *judgment* than the legislature, who, in the circumstances above stated, should pretend to confine him to any given rate of interest, would have made for him."

That even admitting the judgment of the legislature to be better than that of the individual, still the usury laws can be no protection to him,

because there are many other ways by which a simple man may ruin himself, which the legislature has not protected him from, such as buying goods at exorbitant prices, buying more than he wants, and other similar cases.

This ends the work of demolishing the five reasons which Mr. Bentham has imagined were the only reasons upon which the usury laws were based.

Mr. Bentham then proceeds to an enumeration of the positive mischiefs of the usury laws.

"The first I shall mention is that of precluding so many people altogether from getting the money they stand in need of, to answer their respective exigences. Think what a distress it would produce, were the liberty of borrowing denied to everybody." I confess myself unable clearly to understand what the author means by this mischief. I believe it was never before pretended that usury laws lessened the quantity of money or prevented any one from borrowing.

The second mischief is, that if any man is not permitted to borrow, he must sell his property at a greater loss than the extra interest would occasion. Here, again, he imagines that the usury laws prevent men from borrowing.

But the third and last mischief is somewhat extraordinary, and proves not only how bold a man must be who opposes the deliberate verdict of mankind by novel and unfounded theories, but how deeply he will plunge into error, who draws entirely upon his imagination for information which can be nowhere found but in the practical business of life. He says:

"The last article I have to mention in the history of mischief, is the *corruptive influence* exercised by these laws on the *morals* of the people, by the pains they take, and cannot but take, to give birth to treachery and ingratitude.

"To purchase a possibility of being enforced, the law neither has found, nor, what is very material, must it ever hope to find in this case, any other expedient, than that of hiring a man to break his engagement, and to crush the hand that *has been reached out to help him*."

This is too bad even for a writer who draws entirely upon his imagination. Had Mr. Bentham taken the pains to understand and state the reasons upon which these laws really are founded, and to overthrow those reasons as successfully as he has the cob-houses of his own imagination, he might have been entitled to the indulgence of a little sentiment of this sort. But to steer clear from the beginning to the end of his book of the sole questions upon which the policy or expediency of such restraints depend, and then to end with a poetical triumph of this sort, is a liberty which perhaps no other man but Jeremy Bentham would have indulged in;—I say to end, because I have given the substance of his book. If it had been my object to attempt to overthrow the reasons given to support the propositions advanced, a more detailed statement would have been required in order to give a fair view of his side of the question.

But with this reasoning (though I by no means assent to some of it) it

is unnecessary to consume time, because I shall endeavor to show that the propositions, to support which that reasoning is employed, have but a remote connection with the usury laws. If the men of Mr. Bentham's days, either by their writings or conversations, induced him to believe that the laws against usury were enacted only for the protection of the prodigal, the indigent, the projector, or the simple, they must have abounded in ignorance, and he in credulity.

The policy and expediency of usury laws must depend mainly, if not entirely, upon two questions.

1st. Supposing the parties to stand on equal terms, and the bargains which they make to be, in general, perfectly fair as between themselves, is it, or is it not, for the interest of the public to allow money to be converted into merchandise, and bought and sold at any price the parties may choose to stipulate?

2d. Do the parties in general meet on equal terms, and are the bargains, in the absence of usury laws, as fair as bargains usually are in relation to merchandise?

These two questions involve substantially all the other questions that relate to the usury laws; for, if perfect freedom as to the price of money neither injures the public nor individual borrowers, any more than the same freedom in relation to merchandise, then Mr. Bentham is right.

If, on the contrary, this freedom would be injurious to the public, or so generally to borrowers, as to call for protection from the law, then it is equally clear that he is wrong. I say it is equally clear that he is wrong if the latter supposition is true, because no one admits the evils, and complains of the remedy. The complaint is not that usury laws, as they now exist in England, do not constitute the best remedy for the supposed evils, but that the supposed evils have no existence. All that I shall attempt to show, therefore, is, that these evils always have existed, and probably always will, unless checked by some legislation, of some kind or other. If any discovery of a better remedy than that resorted to by nearly all the civilized nations of the world should be pointed out in this inventive age, let the new remedy be applied. Until such discovery the old remedy must be deemed the best, if the evils complained of really exist.

The little book of Mr. Bentham on this subject was one of the first, if not the very first, that contains a systematical attack upon the whole policy of the usury laws.

No reformer before his day was bold enough to recommend so wide a departure from the legislation which ancient and modern nations have been obliged sooner or later to resort to. Adam Smith dealt pretty freely with many of the usages and much of the legislation of his own and other countries. But, intelligent and fearless as he was, he expressly admits the necessity of the laws in question. When Mr. Bentham, therefore, undertook the arduous task of showing that all mankind were wrong in the conclusion to which they had arrived, one would have supposed that at least he would, from a regard to his own reputation, have informed himself upon what questions the policy of those laws depended. At the present

day, at least, it will be admitted that they mainly depend upon the two which I have stated. Yet, from the beginning to the end, Mr. Bentham nowhere states, formally or substantially, either of these questions. I have given the substance of his book so far as it relates to the laws against usury. In letter 10, he undertakes to ascertain the grounds of the prejudices against usury. This attempt I shall remark upon by and by. The other letters may have a bearing upon the subject, but so remote that, at my time of life I am unable to discern it.

Still I hear the advocates of free trade in money matters exultingly refer to Mr. Bentham's book, as settling all the difficulties which surround this intricate and perplexing question. All I ask of the public is to read this book, after first deciding in their own minds what the questions are upon which the policy of those laws depend, and if they find those questions anywhere stated or discussed, I have been unfortunate enough to overlook the page which contains it.

I shall take but a brief view of the subject, because nothing but brief views on any subject, in this busy age, stand a chance of being read, and also because I hope to provoke a discussion of the important questions which it involves, by those better informed than I pretend to be.

1st. I think I cannot be mistaken in saying that the first question upon which the policy of these laws depends, is, whether it would or would not be injurious to the *public* to allow money to become the subject of unrestrained traffic, like any other article. If such a traffic would not injure the public, then one of the reasons which have been supposed to exist is removed. If it would, then all will agree that they ought to be reënacted with their original severity.

How is it to be decided that such a freedom would injure the public? The answer is a very plain one. If such a freedom from restraint would inevitably increase the average rates of interest, it would be a serious evil to the community. If its tendency should be to reduce the rates below what they formerly were when the usury laws remained in force, it would be a blessing. If, on the other hand, they neither increased nor diminished the rates, then, so far as the public is concerned, the restraints ought to be entirely withdrawn, because all penal laws are odious, and when they have no effect of any kind are also useless.

The advocates of the free-trade principle, at least those with whom I have conversed, agree that, so far as the public is concerned, the whole policy of the laws depends upon the questions I have stated. They consequently contend very earnestly that interest would be lower, if the restraints were all thrown off, than it now is under the partial restraints that remain. Those who contend for this effect from a total repeal are principally money-lenders, men who are interested in keeping up the rates as high as possible. I have had some difficulty in discovering what should induce men to wish for the repeal of a law which, as they say, is sure to lessen the income or interest of their money; still, as I know many of them to be conscientious and upright men, I have never questioned their sincerity, although it is a sincerity very liable to be turned wrong end foremost.

I cannot find that Mr. Bentham anywhere discusses this question, but

he repeatedly states opinions from which others of his school infer that he thought that the usury laws have a tendency to increase the rates of interest. I draw precisely a contrary inference from all that has a bearing on the subject. For instance, in his second letter, page 13, he states, "And in Hindostan, where there is no rate limited by law, the *lowest* customary rate is ten or twelve." "In Constantinople, in certain cases, as I have been informed, thirty per cent. is a common rate. Now, of all these widely different rates, what is there that is intrinsically more proper than another?"

He had previously stated that in Ireland it was six, and in the West Indies eight per cent. If Mr. Bentham contends that thirty per cent. is intrinsically as proper as six, he does not agree with most other advocates of the free-trade system, that high rates are injurious to the public; for if they are injurious to the public they are not proper.

But can it be seriously questioned by any practical man that high rates are injurious to the public?

Mr. Bentham, in page 14, says: "For him who takes as much as he can get for any other sort of thing, a house for instance, there is no particular appellation, nor any mark of disrepute; nobody is ashamed of doing so, nor is it usual so much as to profess to do otherwise. Why a man who takes as much as he can get, be it six, or seven, or eight, or ten per cent., for the use of his money, should be called usurer, should be loaded with an opprobrious name, any more than if he had bought a house with it, and made a proportionable profit by the house, is more than I can see."

Why a man always has been, and always will be, loaded with an opprobrious name, who takes as much as he can get for his money, I will consider when I come to remark on the fairness of the bargain between the lender and the borrower. At present I cite this passage as the foundation of the notion that money is to be treated like an article of merchandise, and that in both cases it is right to take all that the lender or seller can get. My view of the subject, both as it regards its effects upon the public and upon the borrower, is, that money is *unlike* any other article, and so unlike it that the possessor has neither the legal nor the moral right to take for it all that he can get. Mr. Bentham seems never to have given a moment's attention to the difference between money and merchandise. I will endeavor to point out what he says he cannot see.

In the first place, all merchandise is, in some form or other, the product of individual labor or skill. The farmer who produces a hundred bushels of wheat, the manufacturer who fabricates his bale of cloths, and the mechanic who constructs a ship, become the *absolute* owners of the products. Their right is unqualified, for they are not produced for any specific purpose, but, originating solely in individual labor, they are to be used solely to gratify individual caprice or individual love of gain. When the original producer sells them, he conveys all his right to dominion over them, and all this right and dominion over them passes with the article into whose hands soever it may come. The original or any subsequent owner may destroy them if he pleases, and neither the public nor any other individual has a right to complain. So absolute is his right that even the

government cannot take it from him for public use, without making an adequate compensation.

On the other hand, money is not originally the product of individual labor or skill, but is brought into existence by the government. The metallic currency must pass through the mint, or receive in some other way the sanction of the government, before the character of money is impressed upon it. Our paper currency is the creature of state governments, who authorize certain agents of theirs, called banks, to issue certain amounts. Thus the *origin* of the metallic and paper currency is with the government of the country.

2d. The *object* of these products of the government is as different from the products of individual labor as is their origin. The object is a specific one, to benefit the common country at large by affording them a medium for facilitating the exchange of all the commodities in which men usually deal. It is sent out as an *instrument* to represent the value of all other articles.

Its main object was then for the *public good*, as a *currency* to which all men might have access. It was never intended as an article of trade, as an article possessing an inherent value of itself, any further than as a representative or test of the value of all other articles. It undoubtedly admits of private ownership, but of an ownership that is not absolute, like the product of individual industry, but qualified and limited by the special use for which it was designed. The first purchaser from the mint or the bank of a portion of this currency, purchased with a knowledge that it was the currency of the country, and that it was designed for that particular purpose. All the title which he acquired by the purchase was to use it for his own benefit, *provided* he did not interfere with the main object of its creation, to wit, a currency. It is analogous to the use which individuals may make of any other property created for public purposes. A public or navigable river is undoubtedly the property of the public, destined for specific purposes and uses. An individual, one of the public for whose use this public river or other highway was intended, may acquire a particular kind of property in it. He may use it in any way that does not interfere with the grand object of all highways; but if he exceed that object, and undertake to prevent others from using it in the same manner, he exceeds his right. The owners of the land adjoining a highway are the owners to the centre. If a mine should be discovered under it, they alone could claim it. But this private right must be so used as not to interfere with the travel of the public. Many other modes of illustrating the limited nature of individual title to the currency of the country will occur to every one.

Can an individual owner of a portion of the currency use it as he pleases without regard to the object of its creation? The individual producer of the one hundred bushels of wheat may throw it into the sea if he pleases, and neither the government nor any individual has a right to complain. But suppose forty or fifty capitalists should buy up all, or nearly all, the metallic currency of the country (which it is in their power to do), so that all the paper currency must of necessity be withdrawn from circulation, and consequently all the business of the country come to a stand; suppose they should insist upon their right to use it as merchandise, and keep it

locked up in their warehouses; would any lawyer among us say they had either the legal or the moral right so to do?

In a general sense, the government has a right to prevent an individual from using any property, over which, according to common parlance, he has an absolute right, to the injury of the public. But this is a general power, to be exercised by general laws, and in no other manner. It is wholly unlike the case supposed, for until those general laws are enacted, the individual may legally use his property in any way he pleases. But the right which the government has to the currency is not a general right to pass all laws required by the public good, but a *specific interest* in the thing itself which constitutes the currency. The public is a partner with the individual. It has a joint interest in the thing itself, and an undoubted right to restrain the individual from using it, except for partnership purposes. The elder right is in the public, and the individual purchased merely the power of using it, subject to the elder right.

Again, the inherent and inseparable qualities of money are different from those of any other article. It possesses a power which no other commodity does or can possess. It is beyond the ability of individuals or of the government to confer that power upon land or merchandise. The government possesses the power of converting lead, or rags, or silks, into a currency, but the moment that is done, the lead, or rags, or silks, become money, and this superadded character, conferred upon it by the government, clothes it with a power, different in kind, and greater in degree, than *can* exist in any other article without that character.

This power is separate and distinct from its value. One hundred dollars in land possesses as much value as one hundred dollars in gold, but much less power. The land, though of the full value of one hundred dollars, will not, like money, at all times, and in all places, *command* one hundred dollars value, in any of the thousand different commodities which its owner may want. This power to command everything else, does not exist in the gold, or the silver, or the paper, constituting the materials of money, but arises out of the act of the government, which impresses the character of money upon it. Should the government ordain that certain peculiar shells, should constitute the currency, and be a lawful tender in payment of debts, that currency would possess the same power, though probably not the same value, as gold and silver. The power of money, then, over every other article, arises out of the artificial character given to it by the state, and not out of the qualities of the material of which it is composed. This power consists mainly in its convertibility, in the facility with which it may be exchanged for any other commodity. If an individual should invent a machine capable of performing what no other machine could perform, not only would the materials of which it might be composed be his property, but its powers and capacities would also be his. The law would protect him in the enjoyment of this latter species of property, and prevent any other individual from constructing or using a similar one without his consent. This power and capacity, being the fruit of individual skill, becomes the subject of individual right and property. In theory, therefore, it would seem that the power of money, being the fruit of the industry and skill of the government, would necessarily become the property of the government.

But, in point of fact, this power was conferred upon it for the *benefit* of the *public*, and becomes the property and right of those for whose benefit it was invented.

In the next place, it must be admitted that the power thus conferred upon the currency by government is not only different in kind from the power which the ownership of other commodities confers, but that it is almost unlimited in extent and degree. It being the representative of the value of all other articles, it is indispensable to the business of all men, because every man must deal in some one or other of those articles. When I say indispensable, I do not mean useful, convenient, or desirable, but indispensable in its strictest sense; for a man who is deprived of access to money entirely must stop his business. Should he resort to a barter trade he would find so much of his time consumed in making his exchanges, and so many other obstacles to encounter, that a rival in the same business, who could command a sufficiency of money, would undersell him.

Money, then, is the subject of want to *every* man in the community, and of a want so pressing as to be indispensable.

Money is as indispensable to every man as a license would be in a given case. Suppose, in a case of war or some other exigency, that the government, for purposes of revenue, should find it necessary to enact a law that no business of any kind should be transacted without a license first obtained, and that the price of this license should be governed by the amount of business to be transacted; suppose also that this law should be rigidly enforced; it is easy to see, in the case supposed, that, without a license, *no man* could continue his business; in other terms, that the license would be *indispensable*.

The currency is this license, provided by the government (not for the purpose of revenue, but) to enable *all* men to transact their business.

No other article can be named which is indispensable to the business of every man, consequently, in this particular, money is totally *unlike* anything else. It is also unlike all other commodities in this, that there is no one article, that is made the subject of trade, which *every* man has any occasion for. On the contrary, select any one we please, and we shall find that comparatively *but few* persons are in want of it. The variety of pursuits and occupations is almost as great as the variety of commodities. Each man wants only that in which he deals. Even provisions and clothing consist of a great variety of kinds, and scarcely one can be selected which *all* men want, and no one that is *indispensable*. In case of a scarcity of one, others will be substituted. This difference between all other commodities and money is very material; for money being not only the subject of want, but indispensable to all men, a scarcity is felt by all men; like diseases of the blood, it not only affects the heart and the other vital organs, but the remotest extremities. No portion of the system can escape its contagious influence.

A scarcity, then, in any one of the subjects of trade, affects but a few, and that few in but a slight degree, because other articles can be substituted. If prices should rise considerably above the market value, in ninety days importations from Europe would supply our wants at least, if not reduce the price. There is always a physician at hand for the diseases of trade. But a scarcity of money cannot be cured by substituting something

else. Money, and nothing but money, will supply the wants of individuals. Nor will a supply from abroad cure a disease of the currency arising from scarcity, as in the case of merchandise; for the owners of the latter articles send it wherever prices are highest. But the owner of money is governed by a different rule. In general he keeps it under his own eye. He prefers loaning it to men, and upon security, well known to him. He may be willing to invest it in the stocks, or lands of a foreign country, but very rarely does a capitalist send his money to a foreign country to loan to individuals. He has to encounter the double risk of the solvency of his agent, as well as that of the borrower. For many years money has commanded from twenty to thirty per cent. in many of the western states, upon landed security, while it has been abundant in England and Holland at three and four.

There is another point of view in which money is unlike other articles. It is this, that a scarcity in the latter rarely ever occurs,—a general scarcity never; I say never, because for the last forty years I never knew a general scarcity of all articles, and but a few instances in any one article. But the scarcity of money has been the theme of general complaint. It has existed (either real or artificial) as long as the oldest of us can remember, and the reason is found in the fact before stated, that it is indispensable to the business of every man.

Another essential difference between the two subjects under consideration consists in the facility of creating an artificial scarcity of the one, and the difficulty, if not impossibility, of creating such a scarcity in relation to the other.

Money is concentrative in its very nature. Its home is the pockets of the few. Under the free-trade system this concentrative quality would naturally increase. Merchandise, on the other hand, is diffusive. The object of its creation is distribution and consumption. Without this consumption trade could not exist, and its natural effect is, that merchandise of all kinds is found in great abundance all over the country. When a sale of goods, of any kind, takes place, they part from their owner never to return again. They abide but a short period with no one but the ultimate consumer. Money, on the other hand, is loaned, not sold, and it returns to its owner invigorated with additional power by an increase in its amount. This tendency in merchandise, of diffusion among the many, and in money, of concentration among the few, prevents an artificial scarcity in the one case and facilitates it in the other.

There are other facts which increase the difficulty on the one hand, and entirely remove it on the other. The specie currency of the country, if I mistake not, is estimated at about forty million dollars; the paper at about eight times that amount, or three hundred and twenty million dollars, while the subjects of trade are supposed to be at least ten times the latter amount, or thirty-two thousand millions of dollars. To attempt to create an artificial scarcity in all the various subjects of trade, therefore, would be little short of madness.

All that the most visionary would deem practicable would be to effect an artificial scarcity in some one article. Suppose flour should be selected, and a few wealthy capitalists should buy up two or three millions in value

of that article. Two hundred thousand dollars in flour cannot well be concealed in a pocket-book or in a vault. The attempt would of course become generally known, and probably never be repeated. Nine-tenths of the people, rather than such a combination should succeed in raising the price, would substitute some other article. If there should be a partial advance the evil would be very limited in duration. But the fact that such combinations do not exist to any extent, and never have, is sufficient proof that they will not exist in future. I suspect that the truth of the case is, that there is more danger of loss, than chance of gain, by such experiments. Flour is a perishable article. Almost all kinds of merchandise are subject to great fluctuations in price. Importations, to supply the quantity hoarded up by speculators, would soon follow, and prevent the occurrence of the threatened evil.

The facilities, however, in the case of money, to produce an artificial scarcity, are much greater. I do not mean to affirm that even in respect to money such a scarcity has ever been produced. All I mean to say is, that it may be produced with much more ease than in relation to any other article. Thus, if a few large capitalists should control \$10,000,000 of the specie currency, the banks would be obliged to withdraw from circulation say \$80,000,000 of the public currency. This, of itself, would, under the free-trade system, at once raise the rates of interest up to twenty or thirty per cent. In fact, there seems to be no need of any action on the part of the capitalists. All that is necessary is to pretend that a scarcity exists, and what means have the public of ascertaining the truth? But, in the case of merchandise, the fact of a real scarcity, or a pretended one, can be much more easily ascertained.

But, in relation to the subject of scarcity, money differs essentially from merchandise, not only as it regards the facility of creating it, but in its consequences when created.

Suppose a stranger, upon entering a foreign country, should find a small portion of the people afflicted with a slight disease, of short duration, and which visited them every ten or twenty years — that this disease occasioned but little pain and no deaths; would he consider it among the leading calamities of life, or even as a very serious evil?

Suppose, however, that in the next country which he visited, he found nearly every man, woman and child, in deep distress; all writhing under severe pain, some in the agonies of death, and many gone to the tombs of their fathers. Suppose that he should be told that the disease, which caused all this suffering, was produced by want of food; that it visited them nearly every year, and that the want of food was occasioned by the government allowing individuals to buy up all the provisions which had been deposited in the granaries for public use, and to impose such exorbitant prices, that few, if any, were able to supply themselves with the necessities of life; would he not be apt to rank this among the real calamities of life?

The difference between the extent and degree of suffering in the two imaginary cases is no greater than between that occasioned by a scarcity (real or pretended) of any one of the articles of merchandise, and a scarcity of money. In the case of a scarcity of merchandise, very few are affected

at all ; that few in a very slight degree, for a short period, and the disease happens once in ten or twenty years. But in the case of money, it goes home to the business of every man, rich and poor. It pinches all — it ruins many ; and, what is its worst feature, it is of frequent occurrence. What would be the opinion of any man of common intelligence of the wisdom of that government, which, after providing a supply of food for the wants of the whole, and at the *expense* of the whole, should, instead of fixing a reasonable price, which should enable all to command a portion, convert it into an article of trade and speculation, and thereby defeat the whole object of such an institution ? The currency was created by government, at the expense of the whole, and for the good of the whole. It is as necessary to the wants of business as food to our physical wants. Once allow it to become an article of merchandise, and you effectually starve the business of the country.

It will be perceived that my object thus far has been not so much to sustain the policy of the usury laws, as to show how totally unfounded is the basis of the opposite reasoning, that money is like any other article of merchandise, and, therefore, any lender has a right to take all that he can get.

I have attempted to show that it is unlike merchandise in the following essential features :

1st. That money is the creation of government ; merchandise, of individual industry. Its *origin* is, therefore, different.

2d. That the *object* of government, in creating money, was as a currency for the convenience of all ; whereas the object of the product of individual industry is the advantage of the individual alone.

3d. That the title of an individual to merchandise is absolute, the public having no interest in it ; but that his title to a portion of the currency is *qualified*, he having no legal, at least no moral right to pervert the object of its creation.

4th. That money differs from all merchandise in the *power* which is inseparable from it. That this power was conferred upon it by government, and that it is the right and duty of the government to see that a power imparted for the general good shall not be perverted to the injury of the public.

5th. That this power is the necessary consequence of the character imposed upon it by government, money being the only instrument of exchange, and therefore indispensable to the business of all.

6th. That money being generally in the hands of the few, the facilities for creating an artificial scarcity are much greater than for creating an artificial scarcity of merchandise.

There is another argument, used by Say, quite as unusual as the one I have already noticed. It is this, that usury laws have a tendency to keep up the rates of interest, because the lender who violates those laws will make the borrower pay for the additional risk he incurs. I should not have noticed what I consider is not even a plausible argument, were it not for the fact that I find it in the mouth of every free-trade man with whom I converse. This, and the one already considered, are about all the weapons which their armory contains. The easiest way to dispose of it is, to admit

the fact that when a lender does violate the law he indemnifies himself for the risk of that violation. Does this prove that usury laws have a tendency to increase the rates of interest? What would not only that individual, but all other individuals, have taken in the absence of usury laws; in the absence of that salutary moral restraint, which comes powerfully to the aid of those laws? This argument makes it a matter of reasoning, whether these laws had that effect or not. The free-trade reasoners seem to have a slim opinion of facts and experience. All that the case put by Say proves, is, that in that one case the lender indemnifies himself for the additional risk; but he forgot to state that where there was in England one case of violation of the law, there were ninety-nine of conformity to it. Suppose for a moment that the fact is, not as I know, but as from my own experience under both systems I believe it to be, that in England and in this country, under those laws, take all the contracts for the loan of money together, there was not one case in a hundred of an excess of the legal rate. In Rhode Island banks are very numerous in town and country. Nearly all our loans were from the banks at the legal rates. No bank, to my knowledge, ever dared to exceed that rate, because a forfeiture of the debt might be the result, and that forfeiture the directors who should have violated the law would have had no right to have charged to the bank, but would have been obliged to have shouldered themselves. They, therefore, run a great risk of detection, and in case of escape, they would have made nothing but their portion of the excess as stockholders. The law, therefore, was a perfect protection for all borrowers from the bank. While those laws were in force, therefore, and the banks were obliged to loan at the legal rate, few men borrowed at all from out-door lenders, and none in good credit would give more than six per cent., so long as he could hire of the banks at that rate. The consequence was, as I believe it always has been in England, that out of all the contracts made, not one in a hundred exceeded the legal rate. Suppose, then, that I am correct in this proportion, it follows, that if there were one hundred loans, of one hundred dollars each, ninety-nine of them at six, and one at twelve per cent., the average rates in Rhode Island under those laws was six and one-sixteenth per cent. The question is wholly mis-stated by Say, for, instead of inquiring the effect of usury laws upon lenders generally, he inquires what their effect is upon the one man in a hundred willing to incur the risk of their violation. A fair test of their effect is to ascertain the rates in general; that is, the average rates upon the whole capital loaned, in countries with, and in countries without, these laws. Perhaps a still better test is the average rates in the same country under the different systems. By that test, I am willing that the question shall be decided.

In Rhode Island a virtual repeal of those laws took place in 1817. From that period to the present time a gradual increase has taken place. Directors of banks, finding themselves free from the personal responsibility of a forfeiture, began the free-trade music by shaving drafts. They were not bold enough to take excessive interest upon notes for a considerable period; but excessive interest by way of charging the difference of exchange upon drafts was so pleasing an employment, that they had but little left for notes. Money became scarcer and scarcer upon notes, but generally

abundant upon drafts, till at length the exactions of some few of them (there were several honorable exceptions) became the subject of universal complaint, and the legislature interfered by a law, which I hope the good sense of the people will second them in enforcing with the utmost strictness. This is the result of the free-trade system in Rhode Island. If I have fallen into any error in this statement, there are those around me, better informed than I am, able and willing to correct it. What the result has been in Massachusetts I am unable to state, except from information too vague to rely upon.

In New York, a loop-hole, just large enough to escape through, had admitted all the evils of the free-trade system. No one pretends that since the relaxation of these laws the rates are lower than formerly.

In these three instances of relaxation, New York, Massachusetts, and Rhode Island, I believe all business men will agree that for some reasons or other interest has increased. No doubt the lenders will attribute it to other causes.

Say informs us that in ancient times the more severe the penalties the higher were the rates; but he furnishes no facts to justify his opinion. On the contrary, the only fact he does state refutes the whole proposition. He says that letters patent are still extant authorizing the Jews to loan at eighty-six per cent. per annum. Here, then, is the customary rate in that reign under the *free-trade* system. There was no indemnity for the risk of violating the law, because those rates were authorized by law. Previous to the reign of Henry VIII. the customary rates were forty per cent. The taking any interest was then denominated usury. In the thirty-seventh of Henry VIII. the rates were established at ten per cent. They were reduced from time to time, until the reign of Anne, when they were established at five per cent., and so continued until the present day. An excess of that rate subjects the lender to the forfeiture of the debt, and an additional forfeiture of *three times* the amount. These penalties are of great severity, and, according to Say, ought to have increased the rates of interest. But how is the fact? Why, that the people have conformed to those rates as they were successively reduced, and instead of a general increase, in what country in the world (except, perhaps, Holland) are the rates so low as in England?

Hindustan, Mr. Bentham says, is a *free-trade* country; and he explicitly admits that the lowest rates there are from ten to forty per cent. The usual rate, I believe, is about twenty.

China is practically, and I believe legally, under a similar system. A very intelligent merchant, for many years a resident in that country, informs me, "That in China the inhabitants may be classed into the very rich, the middling, and the very lowest. The rich are very few compared to the middling. They usually possess an ensign of office, but are not allowed to exercise any of its duties, so long as they pursue other avocations. This distinction protects them from the impositions of the petty officers of the government. In China there are no laws limiting the interest of money, or none that have any effect. The rate of interest is very high, varying from twelve to thirty per cent. Those who are reputed rich, and can have great influence with government, can borrow at a comparatively low rate;

whilst the middling class, comprehending the tradesmen, the mechanics, and the manufacturers, pay a very high rate. A silk manufacturer, wishing to execute an order for one thousand pieces of satin, must borrow in order to pay for coloring, weaving, &c. This will consume about three months, and it is very common to pay two per cent. a month for such operations. Mechanics and middling class merchants, in general, pay two per cent. a month. For small sums three per cent. a month is very common. *Money shops*, as they are called, are numerous. It is common for those who do not own shops, to send their money to them to be loaned. There are many lenders who come to Canton from other provinces, and lend money in large sums. They live in a penurious manner, and are called 'blood-suckers.'

"From this description of their system, it may be perceived that the middling class are always kept in a state of dependence, the profit of trade, manufacturing and labor, being absorbed by the few who control the property." Here, then, is another tendency of the free-trade system to lower the rates of interest.

Mr. Bentham has written a chapter upon the grounds of the prejudices against usury. These prejudices, according to him, originated in two facts, one the saying of Aristotle, "that money is naturally barren;" and the other the religious prejudices against the Jews. The supposed saying of Aristotle he chooses to understand in a literal sense, "that notwithstanding the great number of pieces of money that had passed through his (Aristotle's) hands, and notwithstanding the uncommon pains he had bestowed on the subject of generation, he had never been able to discover in any one piece of money any organs for generating any other such piece." Did Mr. Bentham intend to impose upon his readers a belief that such was Aristotle's meaning? He surely could not have believed it himself. Yet, strange as it may seem, this construction has gone into the books of the free-trade writers, and some others, and the money-lenders profess to believe it. The obvious meaning of this brief sentence is merely to express the common opinion then, and the common opinion now, that the lender of money ought not to be encouraged, because he *produces* nothing; which is literally and substantially true, notwithstanding the labor of the modern theorists to prove the contrary. The hirer, by his own industry, aided by this instrument called money, may produce a ship, or a thousand bushels of wheat, and thereby add to the previous stock. But the lender produces nothing. His money was the instrument which assisted the hirer to produce the ship or the wheat. So would the loan of a plough, a saw, or any other instrument, have been of service to the borrower; but that does not constitute the plough the producer of the wheat, or the saw the producer of the ship. Nor is the loaner of money any better entitled to the merit of being a producer, than would be the loaner of a plough or a saw. The plough is an instrument that aids in but one purpose; the saw is an instrument that aids in many purposes, and money an instrument that aids in all. Hence its commanding power.

This was the meaning of the phrase of Aristotle, "that money is naturally barren."

Mr. Bentham is quite as unfortunate in his next attempt, in which he

attributes the early usury laws to the prevailing prejudices against the Jews.

Chesterfield informs us that there is but an inconsiderable few, even among the intelligent, who think for themselves. This is undoubtedly true in relation to what they are not immediately interested in. That but very few men ever thought of this false and absurd statement of Bentham's, is undoubtedly true. It has been taken entirely upon trust. I hope the community, before they take more of this Bentham paper, will require as many endorsers as money-lenders usually do.

Mr. Bentham is obliged to admit that nearly all the civilized nations of the world, ancient and modern, have passed laws against usury. The existence, then, of such laws is admitted, and the only question is *why* they were enacted. Mr. Bentham says, on account of the prejudices against the Jews. Now, in point of fact, in all or nearly all the nations that ever resorted to such laws, the free-trade system prevailed centuries before usury laws were thought of. What nation ever enacted a penal law until the evil existed? Penal laws are among the last species of legislation resorted to. The law of Athens, until a pretty late period, was, that "A broker shall demand no more interest money than what *he agreed* for at first." (Lysias Orat. 1 Themnestum.)

"Let usurers' interest money be moderate." (Ulpianus.)

J. B. Say says, that marine interest in Athens was sixty per cent., when in ordinary cases it was *commonly* not more than twelve. It is not my purpose to do more, on this point, than to show how utterly groundless is the assertion of Bentham that usury laws grew out of prejudices against the Jews. This is accomplished by merely stating, what every man must at once perceive the truth of, that the Grecian and Roman laws could not have originated in a prejudice of that kind. They first tried the free-trade system, as almost every other nation, ancient and modern, did; they found that the money-lenders were exorbitant in their demands; that the power of money at thirty and sixty per cent. concentrated all the wealth in the hands of a few, to the ruin of the industrious of every trade and profession. This was the experience of Rome and of Athens, and so severe was that trial and experience, that in the former the state was convulsed by the revolutions produced by the exactions of the usurers.

Try the same free-trade system in this country, and if we do not in twenty years create a war against property generally, then I shall conclude that no reliance is to be placed upon history and experience.

It was not on account of prejudices against the Jews, then, that the Greeks and Romans resorted to these restraining laws, for, if I am not very much mistaken, they had few or no Jews among them.

In modern Europe, the Jews were to be found in almost every city, and it is probably true that a considerable portion of the money was monopolized by them. But what but excessive interest enabled them to monopolize it? What created the prejudice against them but the very practices now attempted to be legalized in this country?

But upon what authority does the assertion of Mr. Bentham rest, that these prejudices *occasioned* these laws? Upon this point the opinions of ancient judges vary, some of them contending that by the early laws the

Jews were permitted to take usury (all interest was then considered usury), and that the prohibition extended only to the Christians. Some of the ancient statutes refer to the Christian brokers. Ord says, "In the time of Edward I., Edward II., and Edward III., many commissions were granted to inquire of Christian usurers, and *many* were indicated," and so forth.

But, be the object of the early statutes what it may, both the Jews and Christians *did take* from forty to one hundred per cent., and the natural question is, *what enabled* them to exact such unconscionable rates? Was it the power of the Jews personally? They were a proscribed sect. Even to this sect the Christian did pay these unchristian rates. The reply is too obvious; it was the *power* of the *money* — and the fact admitted by Bentham proves incontestably that through all time money has possessed the power of dictating its own terms. Money was probably as plenty then, in proportion to the amount of business, as at the present time. It was not the scarcity, it was not the influence of the Jews, but it was the inherent and absorbing power of the money itself that governed and controlled the whole business of those early nations. All Mr. Bentham's facts are directly opposed to his theory.

The statute of Anne, enacted about one hundred and thirty years ago, and now in force, is, if I may use the expression, a perfect statute. Its preamble bears upon this question: "Whereas the reducing of interest to ten, and from thence to eight, and thence to six in the hundred, has, *by experience*, been found very beneficial to trade, and improvement of lands; and whereas the heavy burden of the late long and expensive war hath been chiefly borne by the owners of the land of this kingdom, by reason whereof they have been necessitated to contract very large debts, and thereby, and by the abatement in the value of their lands, are become greatly impoverished; and whereas, by reason of the *great interest and profit* of money made at home, the foreign trade has been neglected," &c.

The practical men of that day found, what we now find, that at six per cent. the lenders of money, on the whole, become rich faster than any other class.

Mr. B. frequently intimates that it was a prejudice against the *rich* which in part occasioned these laws. Then they did get rich. But it is somewhat unlucky as an argument. Have the kings and nobles of England, of France, of Russia, and of nearly all the despotic governments of Europe, ever been accused of passing laws against the rich by any other man than Jeremy Bentham? The real truth is, that this feeling, which he calls prejudice, is the result of the moral instinct of mankind. It existed in full force among rich and poor, learned and ignorant, republics and monarchies, wherever human bosom was found endued with the knowledge of right and wrong. It exists now, to this day, in this country, and in every country on the globe. I appeal to the feelings of every man in the community, whether any man who lives by habitually exacting excessive rates of interest, is not considered an extortioner? Does he stand as well with the community as men in general? Why? The reason is obvious. The borrower is the slave of the lender. Advantage is taken of his necessities. He has no will of his own. The terms are dictated by the lender. It is the poverty or the necessities of the borrower that consents,

and not his judgment. So say all the statesmen of ancient and modern days. So say the great mass of lawyers, doctors and clergymen, that ever lived. So said the ploughman in the field, the mechanic in his shop, and the merchant at his desk, all over Europe, Asia and Africa; and (with the exception of the advocates of the new light) so say the same classes all over the world to the present day. Let us pause, at least, before we reverse the verdict of universal mankind. Let us have diffidence enough of our own judgment to examine the grounds of this feeling, before we peril our interests on board this free-trade craft, which, upon every trial, has lined the shore with its wrecks.

I will, therefore, proceed to examine the reason *why* mankind have thus felt in relation to this interesting subject. If I mistake not, it will be found that the old notion is the true one, that the lender takes advantage of the necessities of the borrower. This brings me to a consideration of the second question, whether the bargain, in the absence of any restraint, is usually *fair* between the parties.

In the consideration of this question, I hope it will not be understood that I mean to cast the slightest imputation upon the motives or the general moral character of the lender. On the contrary, I have no doubt that many of them really believe that it is right to take all that they can get. They ought to be exempted from blame, because, if they are in an error, they have been led into it by writers of acknowledged talent and ability. I speak not of the motives of the men, but the tendency and effect of the practice, if once sanctioned by the legislature.

In every case, and among all civilized nations, the law requires, as an indispensable prerequisite to every valid contract, that the parties should stand on equal grounds. If they do not, but one party (no matter to what cause owing) has an undue advantage over the other, both common law and common sense inform us that the bargain is void. A married woman can make no contract with her husband, on account of the influence he has over her. An infant is not bound, because he has not sufficient discretion. A debtor, illegally imprisoned, cannot bind himself by a contract with his creditor, on account of the influence of his desire to escape from prison. Even if the imprisonment is legal, a Court of Equity will see that the terms of the bargain were fair. For the same reason a Court of Equity will look with great jealousy upon a contract made by a ward, just after arriving of age, with his guardian, on account of the influence of the latter over the former. A female seduced, although she agrees to the dishonor, is not left without protection, and heavy damages are generally given.

In all these cases the parties *agree* to the contract which the law pronounces void, because they do not meet on *equal terms*. No matter whether the subject of the contract is land, or merchandise, or money; all are treated alike, and all set aside, because one party possesses an *undue advantage* over the other. That advantage may arise out of the subject of the contract, or out of the existing relations of the parties; but arise whence it may, if it *actually exists*, the law supposes that it will be exercised, because men generally use all the advantages which they possess. I say *generally*, because there are some instances in which perfectly fair contracts are made with wards, with minors, married women, and prisoners in jail.

There are also some instances of contracts perfectly just, above the legal interest, between creditor and debtor. All legislation must look at the state of things generally; and experience has proved, beyond all doubt, that, in all these cases, if the party possessing the advantage was allowed to use it, without restraint, in nine cases out of ten he would have been governed by no other rules than the wants of a greedy avarice. It is quite a new doctrine to me that mankind have approached so near a state of perfectibility, that all restraints upon their lusts, their ambition and their avarice, may safely be removed. If it is so, I am very grateful for the information; but until I have a little experience that men in power, unless curbed by constitutions and written laws, will overlook the interest of the public for their own selfish purposes; that lust, unless checked by salutary moral and legal restraints, will spread misery and havoc around it; and that avarice, in the absence of similar restraints, will fill its insatiable maw while millions around are suffering for food; I must be permitted to raise my feeble voice in favor of treating all these selfish and extreme passions alike. Are they not all equally strong? Does avarice claim for itself a milder character than belongs to the other two? May we not reason as plausibly in favor of abolishing all constitutions and laws restraining the abuse of official power? Is it not for the public good that power should *not* be abused? And does not the interest of the man in power, in a large sense, consist in advancing the public good? And yet, does not experience prove that, when men acquire power, the passion called ambition prevents their taking and pursuing this large view of the subject? It is equally easy to show, in a broad sense, that the free-trade doctrines are the best for the public, if the possessors of money would use it only with a view to the public good. But in comes this blind passion of avarice, and urges its possessor to use all its magic power for its own aggrandizement.

This I understand to be the *principle* upon which all usury laws are founded, and not the visionary principle "imagined" by Jeremy Bentham. They proceed upon the principle that money possesses a power which no other article ever did or ever can possess. Is not *that* true in point of fact? That the avarice of the lender will urge him on to exact all that he can get. Is not that true in point of fact? That the wants of the borrower are in general so great, that, in nine times out of ten, he must have the money at all events. Is not that true in point of fact? That the avarice of the lender will, in nine times out of ten, induce him to take advantage of those wants. Is that denied? That the parties do not stand upon equal grounds any more than a prisoner contracting with his creditor. Is not that true? That in dealing for all other articles, men do stand on equal grounds. That no man can deny.

If these *facts* are denied, I can prove them by volumes of testimony. I would take the depositions of the lenders themselves, all of whom *know* that they are true.

Am I not correct, then, in saying that the usury laws *do* deal with money precisely as the general law deals with all other similar cases? That no law will permit one man to make a valid contract with another,

in relation to *any article*, unless the *judgment* and *will* of both are equally free?

The advocates of the free-trade system must be driven to take their ground. They must admit that the borrower *is*, in general, a slave to the lender, and under a *necessity* of complying with the terms dictated, and still contend that the law ought to permit such a bargain to stand, or they must *deny the fact*. I give them their choice. They must take one or the other. Suppose they deny the fact; I will then bring the general voice of the legislators, writers, and the mass of society, in all civilized nations, ancient and modern, against them. Bentham himself admits that this is the unanimous verdict of the civilized nations of the world, and probably that was the very reason that he contended that it was wrong.

Does not our daily observation demonstrate its literal truth?

Why is the borrower of money the slave of the lender? and why is the purchaser of every other article as free to judge for himself as the seller? Why can the purchaser of goods always purchase upon his individual credit, when the borrower of money is always obliged to give bond and mortgage, or a string of endorsers? Why has money *always* commanded this *preference* over every other article? Because every man wants money, and must have it. His wants make it indispensable. Because it is generally confined to the pockets of the few, and always wanted by the many. Because the constitution and laws render it (and it alone) a tender in payment of debts. No other article can be substituted.

If we open our eyes we cannot avoid seeing the narrow quarters into which the borrower of money is driven, and the freedom with which the purchaser of every other article exercises his judgment. Go into any of our crowded cities, and we see granaries, storehouses, shops, and other spacious buildings crowded with merchandise and goods of every possible variety. In every street, lane or alley, for miles in extent, one uniform abundance is presented to our view. This is *always* the case.

But the money of the city is confined to a single street or a narrow alley. All other articles are abundant and in the hands of many. Money is frequently scarce and in the hands of the few. In all the trading streets we see the seller bowing to the buyer, and courting his custom by the most enticing manners. In the money alleys we see the borrower bowing to the lender, with the servility of a French dancing-master. The purchaser enters a store with the air of a free and independent man. The borrower enters a bank with the subdued and sorrow-stricken countenance of a beggar. This is the case now, always has been, and always must be, because the one is urged on by an irresistible necessity, from which there is no escape; the other is a free and independent man, consulting his fancy, rather than gratifying his wants.

If the purchaser is really in want of an article, he goes from store to store, perhaps from city to city. Wherever he goes he finds the seller crowding off his goods upon him from a desire to obtain his custom. If, however, the purchaser is not suited in the article or the price, he can substitute something else, wait a month or two, or forego his wants entirely. In all this dealing the advantage is rather on the side of the purchaser. On the other hand, the borrower of money has a note due at the bank, on

a given day and at a given time, of a thousand or ten thousand dollars. The tender laws compel him to pay in money alone. He must pay at the *time*, or he *must be ruined*. He can substitute no other article; he cannot postpone the payment for a month, until it suits his convenience. It is not a matter of choice or convenience, but of stern necessity. He cannot go to another city where he is not known, nor perhaps to any other bank than the one at which he usually deals.

This bank, or one of its kind friends, will accommodate him at three per cent. a month. His life and death, his bane and antidote, are both before him. On the one hand is thirty-six per cent. per year; on the other, bankruptcy, disgrace and ruin. I now ask any considerate man, who is not a money-lender, upon whom does the distress operate with the most appalling power, the prisoner of the jail, or the prisoner of the bank? Would it not be inconsistent in the law to set aside a contract with the former, which is only of occasional occurrence, and allow the latter evil to exist,—an evil which happens *more than a thousand times every day*?

I affirm it as a fact, then, which cannot be denied, that the lender does take advantage of the necessities of the borrower, that the lender generally knows it at the time, and that many of them do not pretend to deny it; on the contrary, they justify it, and say that it was the folly of the borrower to contract debts which he could not pay. It is the folly of a man to get drunk; but what is the scale of that man's moral feeling who takes advantage of his situation, and obtains from him a deed of the house which shelters his wife and children?

It makes the matter worse that many of these lenders have been deluded into a belief that these practices are legal and just. What is done conscientiously and sincerely is generally done with a corresponding zeal and eagerness. The fanaticism of avarice defends itself with the same arguments as the fanaticism of religion. It inflicts its punishment of fire and fagot with the same coolness and composure. While the puritans of old believed that they were doing God service in hanging and burning the witches, they would naturally look upon the tortures of their victims with philosophy, if not with exultation; and while the puritans of the counter believe that they are benefiting the state by establishing their favorite system, their tears will not fall very freely at the sight of the misery and distress which the exaction of thirty or forty per cent. is bringing upon some of the most worthy and industrious among us.

In most other countries there exists a check—a *moral* restraint upon these excesses, which, under a free-trade system, would be inefficacious here. *Individuals* have some regard to public feeling, and dread the stigma which such exactions, sooner or later, fasten upon their characters. To be considered by all mankind an extortioner is what the moral sensibilities of most men cannot endure. This silent and unseen influence upon individuals is very extensive and efficacious.

But in this country nearly all the money is loaned by the banks, and we know that their moral sentiments are generally at low-water mark. A corporation has no soul. No one is responsible for its conduct in a moral view. A strong legal restraint is the only one that will reach it, for it is merely a legal being. This power of the creditor, therefore, will be exer-

cised by the banks up to the hilt, upon their defenceless victims, in the absence of usury laws. My propositions, then, are these: That nothing but the severest usury laws can keep down the rates of interest; that whether those laws tend to increase those rates is a matter of *fact*, and that the experiment has been thoroughly tried by other nations, and the free-trade system rejected; that this tendency to increase the general rates arises out of the power of money itself, goaded on by the avarice of its possessors, generally the few, taking advantage of the necessities of the borrowers, generally the many; that the necessities of the borrower are generally so great that he has *no choice* — is not a freeman, and takes no part in fixing the terms of the contract. Consequently, to permit such contracts to be legal, is to allow the lender to make the contract himself; that, as this is allowed in no other cases, relating to lands, merchandise, or any other article, it ought not to be allowed in the case of money.

These are the *facts* which I affirm to exist. The free-trade advocates must either deny, or they must *admit* them. If they admit them, they must justify the right of *one* man to *impose* his terms upon *another*. Because these facts have been found to exist in other nations; because they found, by experience, that one of the parties, being a slave, had no will of his own to contract, the governments of those nations have found it necessary to fix the rates for him.

If these facts are still denied, let a committee be appointed by the legislature of New York to ascertain them. In the course of the ensuing year, let the committee ascertain the rates of interest in all the free-trade countries, ancient and modern, and compare those rates with those countries that have lived under usury laws; let them compare the rates at the different periods of the same country, when that country had, and had not, the benefit of these laws. This will test the free-trade doctrine. Let them also *take evidence* and ascertain whether one party to the contract has any will of his own. For one, I am willing that these much-misrepresented laws shall stand the test of these facts. They may be easily ascertained. I have a full conviction that they are as I have stated them. But I may be wrong. Other men of great intelligence view the subject in a different light, and therefore I am anxious for a test, by an enlightened committee, to inquire into facts. Their report will satisfy the nation. Laws on this subject ought to be uniform through the states, and what state so proper to take the lead as the empire state of New York?

If the advocates of the free-trade doctrine, in case these facts should be found *against* them, should still contend that money ought to regulate itself, I should think their trade must have made great inroads upon their moral perceptions. Is that *free* trade where one party is a slave and has no will of his own? I thought a contract, the result of free will and judgment, meant the free will of both parties.

But some of them say, notwithstanding all this, that the "laws of trade" will regulate money without restraint, just as they regulate everything else. The reason why the prices of everything else regulate themselves is that in relation to everything else both parties are *free*. We have the means of knowing where there is a scarcity of any other article. We judge for ourselves. We take or we leave it. It is this *equal power* of

the *buyer*, to buy or not to buy, that regulates all other articles. When we say, therefore, that trade (or prices) will regulate itself, we always mean that both parties have an equal voice in the contract. But if, in fact, the lender dictates his own terms, *he* regulates the price. If the borrower is in general under a necessity of complying with the terms proposed, what agency has he in regulating the rates of interest?

But, say the apostles of this new light, when money is scarce it will be high, and so the reverse. But who is to judge when it is scarce? Is it not the lender, who alone possesses it? Then the power which is asked for the lender is, to allow the rates to be high when there is a scarcity, and to make him the sole judge whether there is a scarcity or not; that is, in substance, the sole judge of the price. In other commodities we have the means of judging for ourselves. If the seller says there is a scarcity, and the purchaser opens his eyes and sees that there is not, he will not buy at high prices, and the seller is *obliged* to come down, or the articles will rot on his hands. This *equal* liberty and *equal* means of judging on both sides is all that is meant by prices regulating themselves. But what means has the borrower of judging of the scarcity of money? Do we not *know* that there is *money enough* now? That it requires no more money to perform the business of society at one price than at another? If there is enough at thirty-six per cent., is there not enough at six? Is not the scarcity wholly artificial? And is not the consequence of this artificial scarcity simply this, that the whole profits of many industrious men for the whole of the past year have been transferred to the money-lender by the operation of an artificial scarcity? Is this to be endured? Will it be endured without inquiring into facts? If the free-trade writers are correct, that an absence of all usury laws does tend to lower the rates of interest, for one I shall be glad to be convinced; but the fact that the lenders themselves are so anxious for a free-trade system, in a jealous or suspicious mind, would not go far to show that they thought so; for why should they wish the rates reduced?

Let them, however, convince us by facts and experience. I object to the whole mass of their theories. Scarcely any two of them agree in those theories. The writers denominate these artificial rules the *science* of political (that is, national) economy. Why not furnish us with a science of individual economy? The one is quite as necessary and quite as useful as the other. The science of prudence, I suppose, would come next — a subject quite as reducible to rules as economy. The truth is, that literary men of all ages have had some predominant hobby. At one time the science of astrology ruled mankind. Next comes metaphysics, which employed the pens of the ablest men of its age. That science is now generally agreed to deal pretty much in moonshine, and has gone with its fellow-science of astrology to the tombs of the Capulets. Next came political economy, which had its day, though a brief one. We now find it low down in the western horizon, phrenology over our heads, and animal magnetism about an hour high in the east. What will come next no one can even guess. Come what will, for one, I shall not abandon the experience and wisdom of mankind very hastily, especially in relation to a

question so nearly touching the safety of property in general, as the one before us.

Property-holders seem to forget that they are living under a republican government, that the general feeling is already sufficiently radical, without provoking it by exactions which even its best friends cannot justify. The tenure of property is more frail than most men here imagine. It is inexpedient to exercise all its extreme rights, even if we admitted that this is one of them. The moral feeling of the great mass of men is against the right now claimed. That feeling, sooner or later, will prevail and go into our legislation. Is it not better to let it act now, rather than to wait until the high rates shall sour and exasperate the mass of the community. Legislation, under such a feeling, might touch upon some of the necessary and essential rights of property. For one, I had rather come down voluntarily and gracefully from a position which cannot be maintained, than to be obliged to abandon it in a more awkward gait. Let the rates be fixed now while the public mind is cool. Stop up all the little cat-holes in your statute, just large enough for the money-lenders to escape through. Take the English statutes of Anne; which cover everything, and we shall have no trouble about two per cent. per month.

If, however, the free-trade system is resorted to, give it a *fair trial*. Remove all the present restraints, and try over again the experiments which have so many times been tried and failed. I am very sure it would never be tried but once; but I much fear that in that one trial the system of extortion, which would be the consequence, would hurry us fast and far down towards that power which feels no attachment to property, and no sympathy for the sufferings of its possessors.

PHOTOMOUNT
PAMPHLET BINDER

~
Manufactured by
GAYLORD BROS. Inc.
Syracuse, N. Y.
Stockton, Calif.

EcF

W5743fr

554331

Whipple, John

Free trade in money.

University of
Libraries

DO NOT
REMOVE
THE
CARD
FROM
THIS
POCKET

Acme Library Card
LOWE-MARTIN CARD

